

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for June 22, 2005 PLANNING COMMISSION MEETING

P.A.S.: Pre-existing Special Permit #32A

PROPOSAL: To expand the area where the sale of alcoholic beverages for consumption on the premises is allowed to include a beer garden for the Overland Station.

CONCLUSION: The existing bar pre-exists 1994 when the Zoning Ordinance was amended to include provisions regulating the sale of alcohol. While the proposed expansion for a beer garden does not provide the required 100' separation from the R-3 to the west, it also does not bring the use any closer than the existing building. Considering that four of the lots that are part of this request along with those in the R-3 to west are part of a decades-old plat that has not been improved, the impact of the proposed expansion upon surrounding properties is minimal.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached ownership certificate.

LOCATION: 2801 Northwest 48th Street

EXISTING ZONING: B-1 Local Business

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

North:	Commercial, vacant B-1, R-3
South:	Residential R-3
East:	Industrial I-2
West:	Vacant R-3

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land uses in this area.

BACKGROUND: This is a request to expand the area where the sale of alcohol is allowed at the Overland Station to include an outdoor beer garden. The beer garden is a 6'6" x 40'

addition to the existing building. The sale of alcohol at this location pre-dates 1994 when the Zoning Ordinance was amended to require special permits for on and off-sale alcohol. As an allowed use by special permit in the B-1 district and because it pre-dates 1994, it is considered a pre-existing special permit per Lincoln Municipal Code (LMC) Section 27.63.040. That section requires that any enlargement or expansion be treated in the same manner as a new special permit including a public hearing before the Planning Commission.

As required, this request is reviewed using the conditions provided in LMC 27.63.680 for a special permit for the consumption of alcohol on the premises. The analysis of those conditions is included below.

ANALYSIS:

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC)

27.63.680: Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts upon the approval of a special permit. Alcoholic beverages may also be sold for consumption on the premises as an accessory use to a golf course or country club as part of a separate special permit under Section 27.63.130 approving the golf course or country club in any district where recreational facilities are allowed as a permitted use, permitted conditional use, or permitted special use. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

(a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross floor area.

Off-street parking must be provided at the ratio of one space per 100 square feet of floor area. While the use is pre-existing, LMC states that any amendment be in compliance with all applicable requirements. The number of off-street parking is not shown on the site plan, but must be shown to demonstrate that an adequate number is provided to accommodate both the existing uses and the proposed expansion. The site plan must be revised to show all required parking at the stated ratio based upon floor area, including the proposed beer garden.

The proposed beer garden appears to be located over an existing sidewalk that surrounds the building. If there are parking spaces adjacent to this sidewalk, a minimum 6'-wide area for pedestrian access must be provided between the parking spaces and the proposed beer garden.

(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.

This application is for a special permit to expand only the area where the sale of alcohol for consumption on the premises is allowed to include the proposed beer garden. An expansion of the sale of alcoholic beverages off the premises is not a part of this proposal and is not being requested.

(c) The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than 100 feet from a day care facility, park, church, state mental health institution, or a residential district (except where such use is accessory to a golf course or country club).

This use is more than 100' from a day care facility, park, church, state mental health institution, or a residential district with one exception. R-3 abuts the west boundary of this site, and it is approximately 20' from the rear of the existing building and 22' from the proposed beer garden.

As a pre-existing special permit, the use is deemed to have a special permit because it was lawfully established. In the case of not providing the required 100' separation from the R-3 to the west, the proposed expansion is actually approximately two feet further away than the existing building and does worsen the condition. Considering that four of the lots on this site along with those in the R-3 to the west are all part of a decades-old final plat that has not been improved and are all owned by the same individual, the impact of the proposed expansion upon surrounding properties will be minimal.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

No additional lighting is shown as part of the proposed expansion, however all new lighting associated with this request will be required to comply with the City of Lincoln Design Standards and will be reviewed at the time of Building Permits.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not shown as part of this application.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to

the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are shown as part of this application.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

There are two doors on the north side of the existing building, one of which is used to enter the bar, and another that will be used to access the beer garden. Additionally, there is a door in the fence enclosure for the beer garden, but this door opens to the east. The effect of the proposed fence will have no effect on the door used to enter the bar but will partially screen the door that opens into the beer garden. The only new door opens to the east and is not subject to the 150' restriction.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

Access to the premises is from Northwest 48th Street which is not considered a "residential street" at this location.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

- (1) Revocation or cancellation of the liquor license for the specially permitted premises; or**
- (2) Repeated violations related to the operation of the permittee's business.**
- (3) Repeated or continuing failure to take reasonable steps to prevent unreasonable disturbances and anti-social behavior on the premises related to the operation of the permittee's business including, but not limited to, violence on site, drunkenness, vandalism, solicitation, or litter.**

Planning Commission approval is required for this use.

2. LMC Section 27.63.680 requires that determinations regarding setbacks, parking and other matters be made in the review of those special permits and is dependent upon the site plan for the information. The site plan submitted as part of this application does not include all required information and must be revised.

3. DEPARTMENT RESPONSES:

POLICE: The Police Department had no objection to this request.

PUBLIC WORKS: Public Works and Utilities noted that the parking lot surfacing and layout does not meet design standards.

HEALTH: As an advisory note, the Health Department recommends that at least 20% of the area of the total square footage of the walls and ceiling be open to ensure adequate ventilation.

CONDITIONS:

Site Specific:

1. This approval permits the expansion of the area designated for the sale of alcohol for consumption on the premises as shown on the site plan.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.
 - 2.1.1.1 Submit six copies of a revised site plan that includes an accurate scale, all parking spaces, and identifies property lines. This must include a 6'-wide pedestrian access area between any adjacent parking spaces and the proposed beer garden.
 - 2.1.1.2 Provide the floor area/parking calculations showing the total amount of floor area
 - 2.2 The construction plans comply with the approved plans.

Standard:

3. The following conditions are applicable to all requests:
- 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
 - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP, 441-6362, bwill@lincoln.ne.gov
Planner
June 9, 2005

OWNER: Duane Hartman
PO Box 22787
Lincoln, NE 68524
(402) 477-3785

APPLICANT: Overland Station
2801 Northwest 48th Street
Lincoln, NE
(402) 470-9942

CONTACT: Byron Bloom
2801 Northwest 48th Street
Lincoln, NE
(402) 786-3333



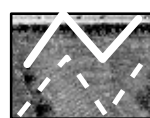
2002 aerial

Pre-Existing Special Permit #32A NW 48th & W Adams St.

Zoning:

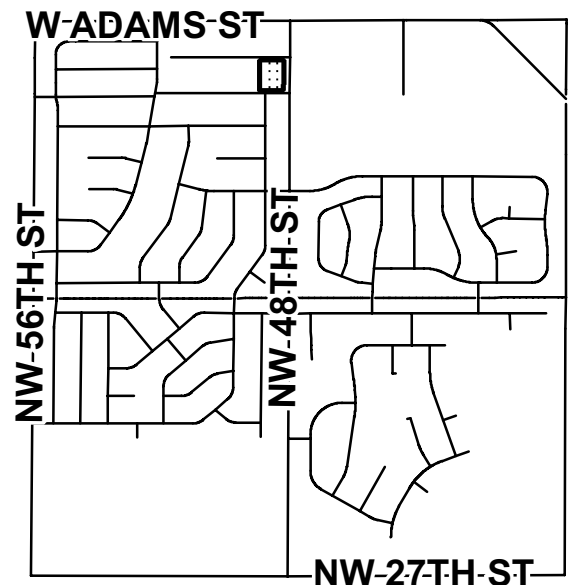
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 18 T10N R6E

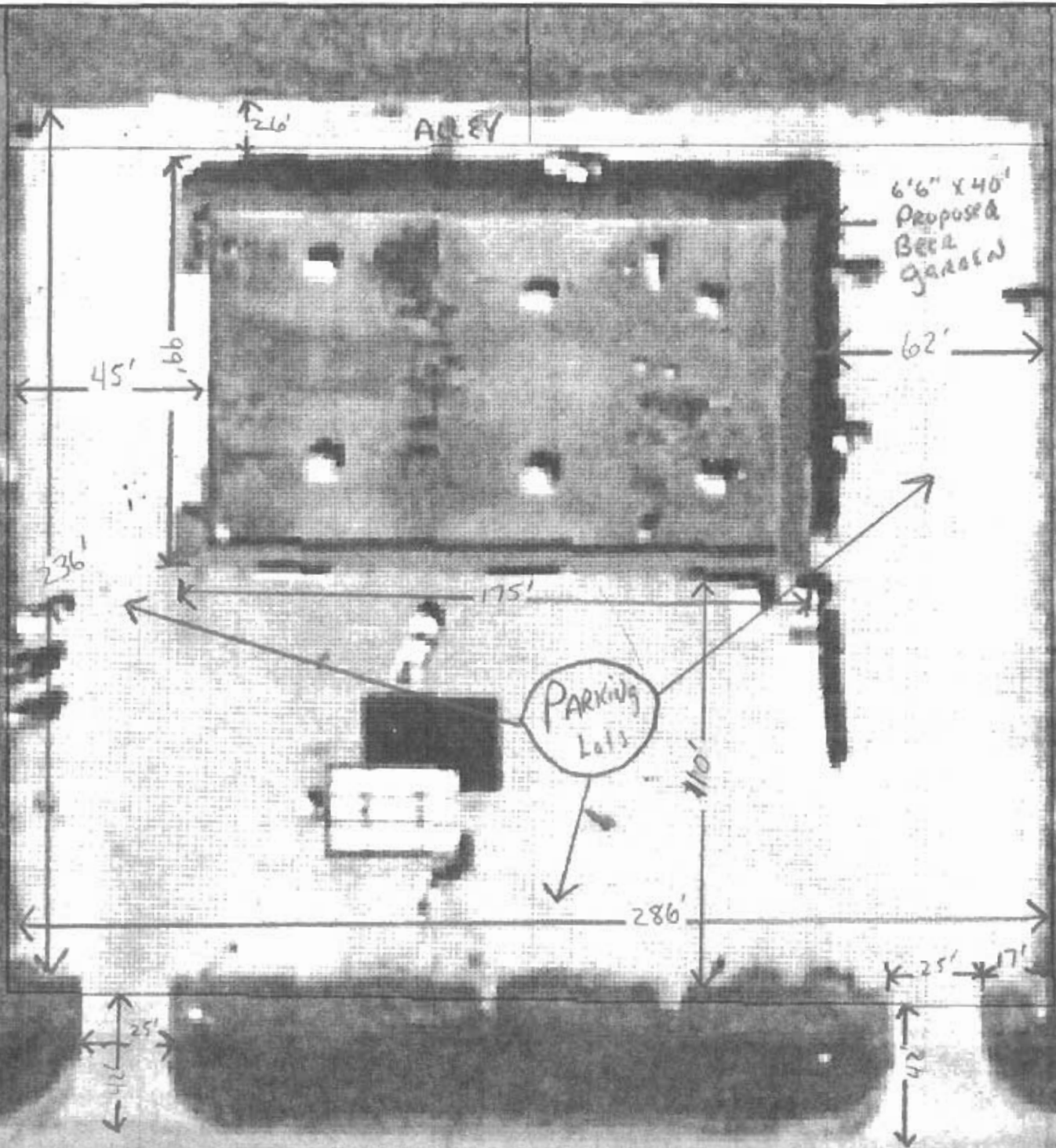


Zoning Jurisdiction Lines

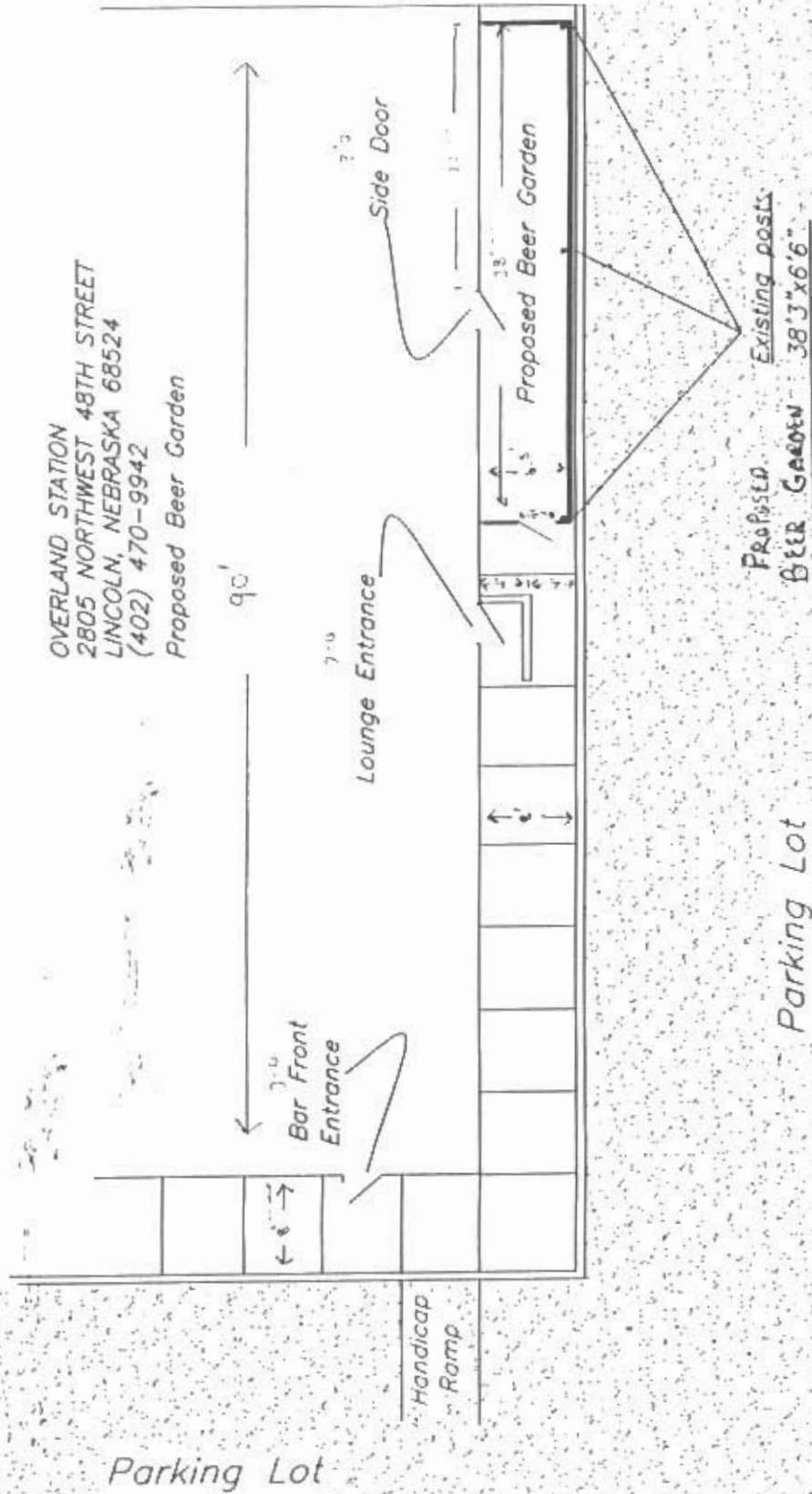
City Limit Jurisdiction



Site map for
OVERLAND station
2805 NW 48th St
Lincoln, NEBRASKA

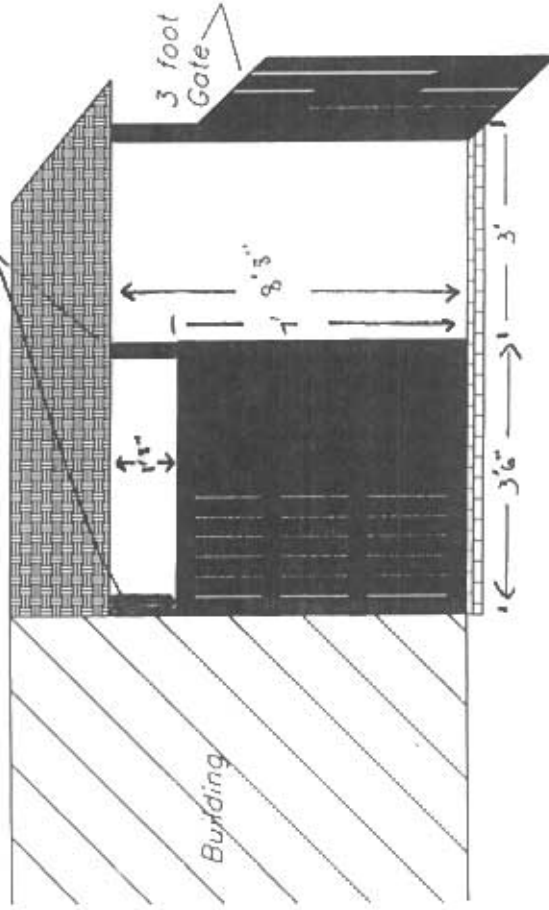


OVERLAND STATION
2805 NORTHWEST 48TH STREET
LINCOLN, NEBRASKA 68524
(402) 470-9942
Proposed Beer Garden

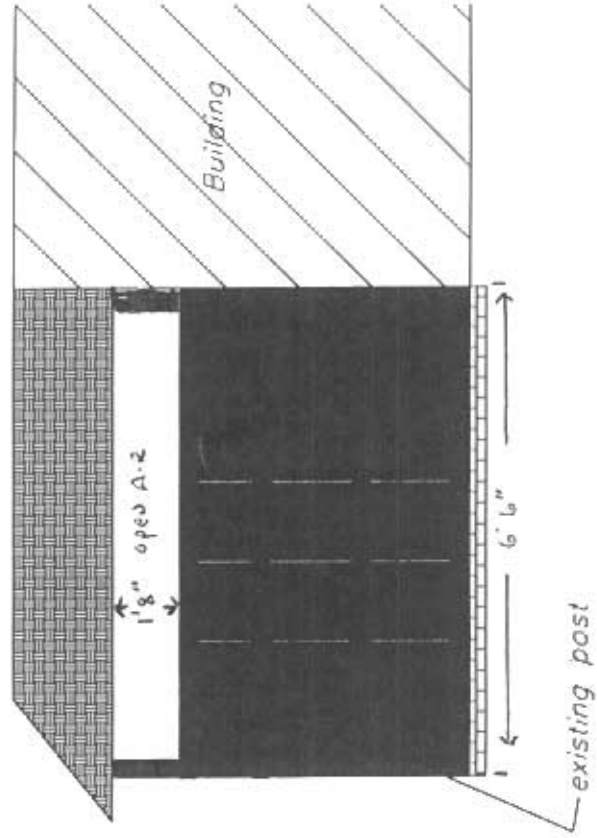


OVERLAND STATION Proposed Beer Garden

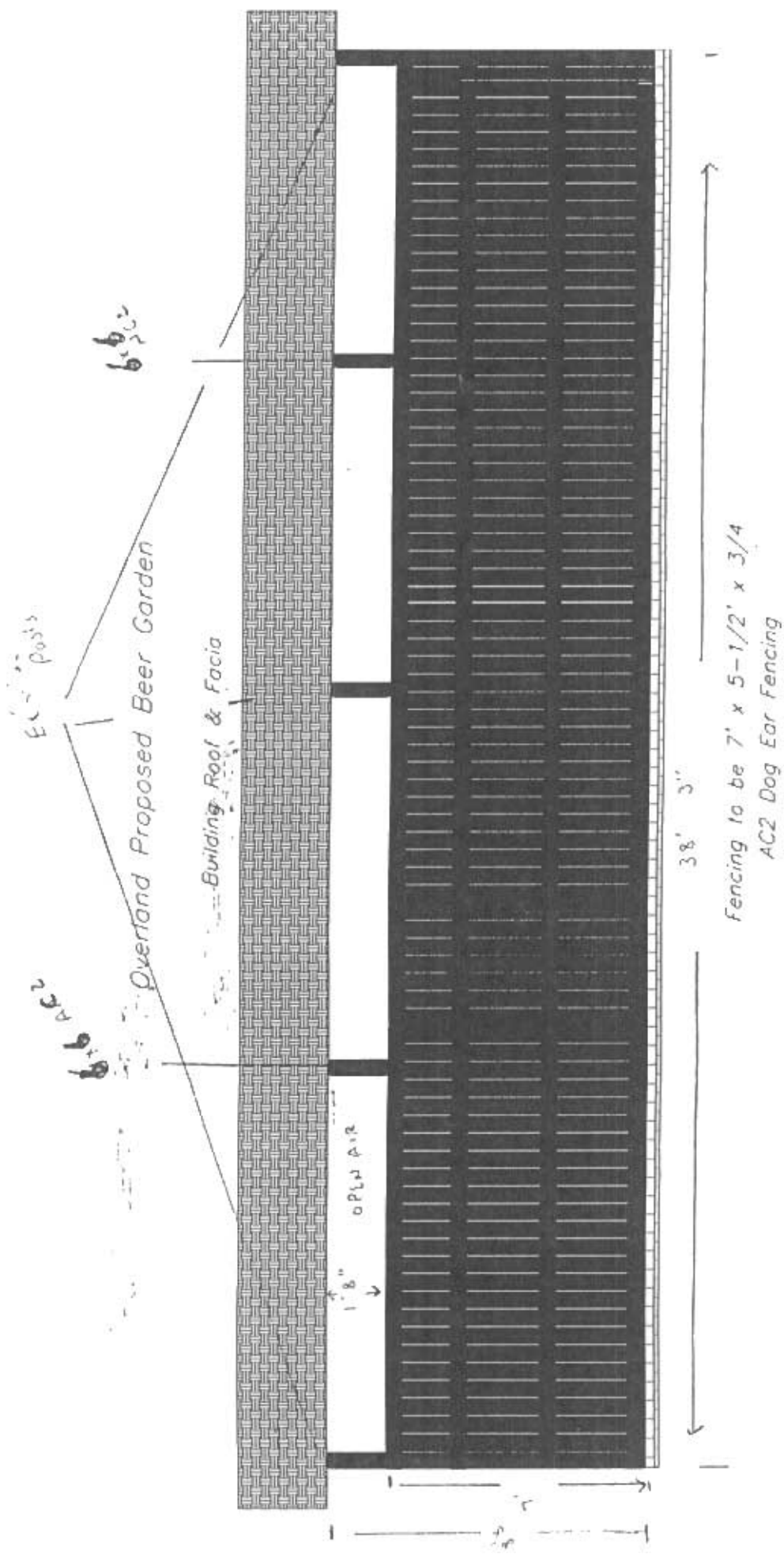
Front View
Overhang



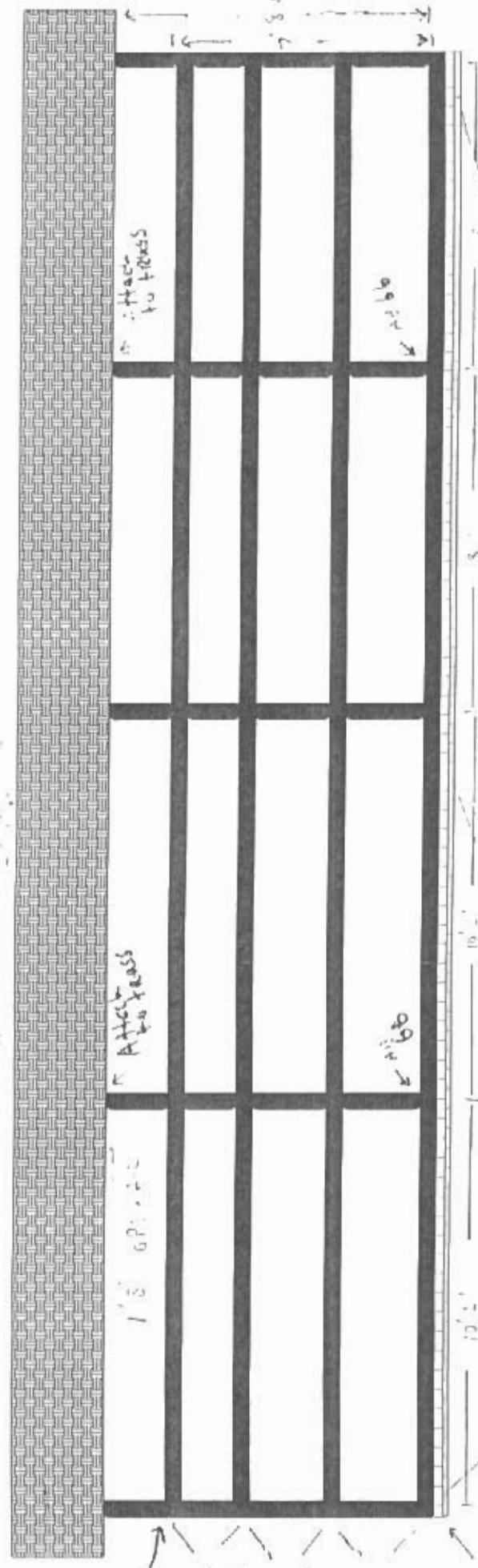
Rear View
Overhang



Fence - 7' x 5' 1/2" x 3/4" Dog Ear AC2



digging



FENCING
7' x 5 1/2" x 5/16"
AC2

Existing Posts

Attach to Posts

Attach to Posts

2x6

2x6

2x6

2x6
2x6
2x6
2x6
2x6

3'

10'

1'

10'

May 24, 2005

Lincoln Planning Dept.
555 So. 10th St.
Lincoln, NE 68508

Dear Sirs:

It is my desire, as owner of the Overland Station Bar and off-sale, to request and be granted a special use permit to construct a beer garden adjacent to the north of my bar at 2805 NW 48th St. Because of the recent enactment of this city's smoking ban, patrons have asked that I offer them an alternative to the smoke-free environment hence my request to construct an outside beer garden. The structure will be visibly appealing to ones eye, quiet, monitored by security and constructed in compliance with any rules and regulations stipulated by the planning department. It's presence will not burden any parking requirements for the premises and I believe, as owner, will offer a safe alternative for my smoking patrons. Your consideration for my request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron Bloom", followed by a horizontal line.

Mr. Byron Bloom

**Capitol Title
(402)434-3737**

OWNERSHIP CERTIFICATE

**TO: JOHN NANOS
WOODS BROS. REALTY
SOUTHPOINTE**

FILE NO: CTC31355

Capitol Title, authorized to engage in the business of abstracting, hereby certifies that the records of Lancaster County, Nebraska have been carefully examined with reference to the Owner(s) of Record of the following described real estate, and from such examination finds the following:

LEGAL DESCRIPTION:

Lots 1, 2, 35, 36, 37, 38, 39, 40 and 41, Block 5, Airport Heights, Lincoln, Lancaster County, Nebraska.

FEE SIMPLE OWNER OF RECORD:

DUANE HARTMAN INVESTMENTS, INC., a Nebraska corporation

LIENHOLDER OF RECORD:

Deed of Trust executed by DUANE HARTMAN INVESTMENTS, INC., a Nebraska corporation, Trustor, -to- LINCOLN FEDERAL SAVINGS BANK OF NEBRASKA, Trustee and Beneficiary, to secure the sum of \$1,920,000.00, dated October 30, 2003 and filed November 13, 2003 as Instrument Number 2003-112677 in the office of the Register of Deeds of County, Nebraska. (Includes other property)

Deed of Trust With Future Advance Clause executed by INTERSTATE PETROLEUM DISTRIBUTORS, INC., a Wyoming LLC, and AUTOMATIC GAS DISTRIBUTORS, INC., a Colorado Corporation. Trustors, -to- FRED W. CROUCH, Trustee and FIRST BANK NATIONAL ASSOCIATION, Beneficiary, to secure the sum of \$8,000,000.00, dated April 14, 1989 and filed April 18, 1989 as Instrument Number 89-9790 in the office of the Register of Deeds of Lancaster County, Nebraska. (Includes other property)

LEASES OF RECORD:

Memorandum of Leases executed by and between ARNOLD HEIGHTS PLAZA, COMPANY, (Lessor) and MICHEL MARTS, INC., (Lessee) dated April 26, 1976 and filed May 10, 1976 as Instrument Number 76-9674 in the office of the Register of Deed of Lancaster County, Nebraska.

Memorandum of Special Purpose Lease executed by and between MICHAEL MART, INC., (Landlord) and AUTOMATIC GAS DISTRIBUTORS, INC., a Colorado corporation (Tenant), filed June 3, 1987 as Instrument Number 87-19052; assigned to CORDES PETROLEUM, INC., by Memorandum of Assignment and Conveyance of Special Purpose Leases and Other property dated December 2, 1994 and filed February 10, 1995 as Instrument Number 95-3448 in the office of the Register of Deeds of Lancaster County, Nebraska.

Owners Agreement executed by and between AUTOMATIC GAS DISTRIBUTORS, INC., a Colorado Corporation and ARNOLD HEIGHTS PLAZA COMPANY, dated May 5, 1987 and filed June 11, 1987 as Instrument Number 87-20118 in the office of the Register of Deeds of Lancaster County, Nebraska.

CTC31355